(25) AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1328/2003

APPELLANT	Motilal, s/o Late Parmanand Dansena, aged about 50 years, Agriculturist, R/o village Jorapali, P.S. Kotara Road, Distt. Raigarh, (CG)
	Versus
RESPONDENT	State of Chhattisgarh Through:-The Station House Officer Kotara Road, Raigarh, Distt. Raigarh (CG).

Appearance:

Shri J.K. Shastri, counsel for the appellant.

Shri V.V.S. Murthy, Deputy Advocate General, with Shri Sushil Dubey, Govt.Advocate, for the State.

ORAL JUDGMENT
(24.05.2007)

SUNIL KUMAR SINHA, J.

Heard.

1. This appeal is directed against the judgment of conviction and order of sentence dated 20-11-2003 passed in Sessions Trial No.73/2003 by the 2nd Additional Sessions Judge, Raigarh, District Raigarh (C.G.), whereby the said Court after holding the appellant guilty of the offence punishable under Section 376 I.P.C., sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine, to further undergo R.I. for 3 months. However, the present appellant and his son namely Rohitlal (accused) both were acquitted u/s 498-A of I.P.C.

2. The case of the prosecution is that the prosecutrix namely Gouri Bai (P.W.15), was married to accused no.1 Rohitlal on 30.6.2001. Since then, she was residing with her husband and father-in-law (both the accused persons) in their house at village Jorapali which is at a distance of 5 K.Ms. from village Aurada, which is the native place of the prosecutrix where her parents reside. She lodged a First Information Report (Ex.P.8) on 03.03.2003 that just after 6-7 months of the marriage; the accused persons were treating her with cruelty on account of demand of dowry. They were demanding a Cooler, T.V. and Motorcycle and on such pretext, some times, she was beaten by the husband. She also made allegations that on a particular day (on some Thursday), when her husband had gone for his works and she was all alone in the house and was cooking food, her father--in-law (present appellant) came to her and forcibly threw her on the floor by overpowering her and thereafter he removed her *Saree* and petticoat, gagged her mouth and committed forcible sexual intercourse against her. When her husband came back, she narrated the story to him, who said that she is making false allegations on his father. She also mentioned in the F.I.R. that she had narrated this story to the villagers. She further mentioned that on the last Thursday i.e., 27th Feb.2003 when her mother came to her village for meeting her, then, she narrated the incident to her, thereafter, she went back to her own village, informed the incident to the father and some persons from her parents place came to village Jorapali and a *Panchayat* was convened. When nothing was resolved in

Panchayat, she lodged the report on 30.03.2003. On this report, the investigation commenced, the prosecutrix was sent for medical examination by Ex.P.10. She was examined by Dr.J.Ekka (P.W.18), who prepared her report Ex.P.10-A. According to the report, every thing was normal. She opined that no definite opinion can be given regarding rape. The petticoat of the prosecutrix was seized on 03.03.2003 under Ex.P.12. The appellant was arrested. He was also sent for medical examination under Ex.P.14 and was examined by Dr. Anil Gupta (P.W.19), who prepared his report Ex. P14-A. According to his report, the appellant was capable of performing sexual intercourse. The site plan of the place of occurrence was prepared by the I.O. under Ex.P.7. During the course of investigation, many big and small utensils, household articles, plastic chairs, Portable T.V. Set alongwith Bicycle etc., were seized showing them to be the *Stri Dhan* and after completion of usual investigation, the charge sheet was filed against the appellant and co-accused Rohit Kumar in the Court of C.J.M., Raigarh, who committed the case to the Court of Sessions, from where it was received on transfer by the Court of 2nd Addl. Sessions Judge, Raigarh.

(3) The learned Sessions Judge framed charges u/s 498-A I.P.C. against both the accused persons alongwith an additional charge of section 376 I.P.C. against the present appellant. On judgment, both the accused persons were acquitted u/s 498-A IPC. However, the present appellant was convicted u/s 376 and was sentenced as aforementioned. It is against this judgment of

conviction and order of sentence, the appellant has filed this criminal appeal.

(4) The conviction of the appellant is based upon the testimony of the prosecutrix Gouribai (P.W.15). The Sessions Court recorded a finding that she is a fully reliable witness and the story set forth by her is proved beyond reasonable doubt so as to pass a judgment of convicting against the appellant.

(5) Learned counsel for the appellant argues that the prosecutrix is an unreliable witness and no conviction can be based upon her testimony. His submission is that, in fact, the prosecutrix does not want to reside with her father-in-law and since the husband was not paying any heed to her request, the relations between them were strained, therefore, a false report has been lodged by the prosecutrix against her husband as well as the father-in-law. He also argues that according the evidence of P.W.5 Sandhya Koka, a reconciliation proceeding between the husband and wife had taken place in *Pariwarik Salaha Kendra,* Raigarh, which shows about the strained relation between the parties, particularly, between the husband and wife and even after reconciliation, when they could not unite and the relations could not resume to cordial and better, this report has been lodged.

(6) On the other hand, learned Deputy Advocate General opposes these arguments. His submission is that on account of strained relationship between the parties, the prosecutrix was being treated with cruelty by the husband and her father-in-law

and ultimately the father-in-law committed sexual intercourse against the prosecutrix, due to which, she had to lodge the report. His submission is that the judgment based upon the testimony of the prosecutrix, is sustainable and it does not require any interference by this Court.

(7) I have heard learned counsel for the parties at length and have also perused the records of the Sessions Case.

(8) So far as the evidence of the prosecutrix (P.W.15) is concerned, she deposed vide para 2 that on some Thursday, in the month of Fagun, at about 9 a.m., when she was preparing food in the house, and as her husband had gone to his work, the father-in-law came to her, removed her *Saree* and threw her on the floor. Thereafter, he removed her petti-coat and committed forcible intercourse against her. She has deposed that he continued like this for half an hour and thereafter she was released. She further deposed that when her husband came to the house at about 1 – 1.30 p.m., she narrated the story to him, but he did not believe her. He said that he will ask his father and if he denies, then, he will turn out her from his house. She has also deposed vide Para 4 that she has disclosed this story to one lady, who resides near their house. She further deposed that when her mother came to her village before Shiv Ratri festival, she narrated the story to her and then her mother went back and told all this to her father, who had come to her house alongwith many villagers for organizing a Panchayat and ultimately, a Panchayat was organized but when nothing could

be decided in the Panchayat, the report Ex.P.8 was lodged by her in the Police Station. She has been put to a lengthy cross examination on many points and ultimately it comes vide Para 15 & 22 that two other inmates were also residing in the house, they were her sister in law (Nanad) and her husband. But the outcome is that they were not present in the house on the fateful day, as they had gone on their usual work. Vide para 17 of the cross examination she had made a new statement i.e., while committing sexual intercourse by the appellant, he had put the clothes in her mouth. When she was asked about missing of such averments in the F.I.R. and the police statement, she stated that she had told all these things to the police and if they are missing from the F.I.R. or the statement she cannot tell the reasons for them.

(9) The mother of the prosecutrix namely Hembai has also been examined as P.W. 7. She has deposed that Motorcycle, T.V., Cooler and Fan etc., were being demanded by the accused persons from her daughter which was told to her. In para 3, she has stated that the story regarding commission of rape by the appellant was also told to her by her daughter when she had visited her house two days prior to Shiv Ratri. She has also made statements regarding the manner of commission of sexual intercourse and has specifically mentioned that while committing sexual intercourse, appellant had put clothes in the mouth of the prosecutrix.

(10) The father of the prosecutrix namely Shyamlal has been examined as P.W.6, who supported the story narrated to him by his wife Hembai (P.W.7) and has also deposed that he had gone to village Jorapali where a Panchayat was convened in which the Sarpanch etc., were also called. He was accompanied by his wife and P.W.1 Bedram and P.W.2 Bhola Shankar in the said Panchayat, but when nothing fruitful came out in the Panchayat, the report was lodged. These two witnesses i.e., Bedram and Bhola Shankar have also stated that they have gone to the said village and a Panchayat was organized. P.W.2 Bhola Shankar deposed that in the said Panchayat, they asked Gowri Bai, on which, she stated that her father-in-law was committing forcible intercourse against her. According to him, the prosecutrix specifically mentioned that on the fateful day, her father-in-law removed her clothes and sat on the cot and thereafter committed forcible intercourse. The other witness P.W.2 has not stated about the specific averments made in this regard by the prosecutrix, but he supported the story to the extent that the prosecutrix had narrated in the Panchayat that her father-in-law had committed sexual intercourse against her.

(11) Now the question arises as to whether on this evidence, referred to above, a finding pertaining to commission of an offence of rape can be recorded ?

(12) In the matter of ***State of Punjab –vs- Jagir Singh, Baljit Singh and Karam Singh (1974) 3 SCC 277***, the apex Court held that a criminal trial is not like a fairy tale wherein one is

free to give fight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of the probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which ex-facie trustworthy on grounds which are fanciful or in the nature of conjectures.

(13) Referring to this decision, the Apex Court further held in the matter of ***State of H.P. –vs- Lekh Raj and another (2000) 1 SCC 247*** that the Criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper-technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the

law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper-technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The Courts cannot ignore the erosion in values of life which is a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.

(14) So far as the victim of rape is concerned, the settled principle is that when the version of prosecutrix inspires confidence of the Court and the Court feels it proper to depend on testimony of the prosecutrix, a conviction can well be based upon the sole testimony of the prosecutrix needing no corroboration thereof. The principle pertaining to testimony of a solitary witness equally applies in case of a rape victim that neither the legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused, as the Apex Court has observed many times that our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. That is to say that before

depending on the testimony of the prosecutrix and basing conviction on her testimony, it must inspire the confidence of the Court and if such a confidence is gained by the Court after going through her evidence and her conduct, the conviction is possible even without corroboration. Per contra, if she does not inspire confidence of the Court and even by supporting evidence, such confidence cannot reasonably be gained, conviction on her evidence even with the aid of the supporting evidence would not be possible.

(15) In the present case, if we examine the conduct of the prosecutrix, it would appear that for an incident which had taken place much prior to the lodging of First Information Report, as stated by her, no report was lodged by her for a long time. Even for such a big incident, no message was sent by herself to the parents who were residing at a distance of 5 K.Ms. from her in-laws' place. The prosecutrix deposes and also mentions in the F.I.R. that on the very same day of the incident, she has narrated the story to a lady, who was resident of the same locality but the said lady has not been examined by the prosecution nor any step was taken by the Investigating Officer to find out the whereabouts of that lady to whom the story was first narrated. In this regard, the prosecution has examined one Yashoda Bai (P.W.17) who has completely turned hostile and has not supported the version of prosecutrix. She has deposed vide para-1 that there is single Boring Hand-Pump in the village which is situated in the Courtyard of her house and nearly all the villagers including prosecutrix used to come to fetch water

from the said pump, but the prosecutrix has never disclosed anything regarding the alleged incident to her. In the cross examination by the State Counsel, many questions have been put to her but she denied all the questions including the disclosure about the factum of commission of sexual intercourse by the father-in-law of the prosecutrix. This is one part of the conduct of the prosecutrix. The other part would be that if she was really ravished by the father-in-law in his house at about 9 – 9.30 a.m., nothing had prevented her to make hue and cry at once. It is not the case of prosecution that she was threatened by the father-in-law or by any other person, due to which, she kept mum and even after completion of sexual intercourse she did not raise any alarm. This conduct also appears to be unnatural so far as the matter between the father-in-law and daughter-in-law is concerned. In our society, particularly, lower middle class, the father-in-law assumes the status of the father and if such a big even had taken place in a family like present appellant, in the normal and natural manner it should have been resisted by the victim at once and a positive reaction from the victim side should have come on the same day making allegations against the father-in-law, if in fact the incident had taken place. Apart from the said evidence or conduct, if we look into the manner of commission of sexual intercourse, there are many contradictions. Initially, the prosecutrix has stated that the sexual intercourse was committed in the Kitchen room where she was cooking food and was forcibly thrown on the floor, her clothes were removed and intercourse was done. This

is what which was mentioned in the F.I.R., but in her court statement (para 17) she developed the story of putting the clothes in the mouth which is completely, missing in the F.I.R., and according to the contents of the F.I.R., her mouth was gagged by hand. Apart from this also, a big difference is about the place of occurrence, which she narrated in her own evidence and the F.I.R. and ultimately which is said to be disclosed by her in the village Panchayat. As stated above, the place of occurrence was the kitchen room according to the prosecutrix, whereas it comes in the evidence of P.W. 1, who was one of the *Panchas* and resident of village of her father that the father-in-law committed sexual intercourse on the cot.

(16) This court is conscious about the principle of law which says that overmuch importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so, when all the important "probabilities- factor" echoes in favour of the version narrated by the witnesses. But in the present case, I am constrained to say that these are not the minor discrepancies, which may be ignored for the reason that the prosecutrix is an alleged rape victim and her evidence should be given adequate weightage. In a case like present one, when an allegation against the father-in-law is being made after a very long period, for which there is no explanation on record, and the supporting evidence tried to be set forth by the prosecution are not corroborating the prosecutrix, such discrepancies would be

meaningful at-least to judge the testimony of the prosecutrix whether she is making a true or false statement. In this regard, the version of the village Sarpanch Nagendra Negi, who has been examined as P.W.4, is also meaningful. He has been declared hostile by the prosecution, but he has deposed that in fact, he was called in the village Panchayat saying that there is some family dispute between the family of the appellant and family of the prosecutrix, which has to be resolved. He has stated vide para 2 that the father of the prosecutrix has stated that in fact, he wanted to take his son-in-law with him, but nothing was resolved and ultimately the Panchayat had to be suspended. He has not deposed anything like this that the prosecutrix was complaining about the commission of sexual intercourse by her father-in-law. Another important aspect of the case, which is quite surprising, is that during the course of investigation on 04.3.2003, many house-hold articles like big and small utensils, furniture, T.V. etc., along-with bicycle, contained in Ex.P.1 were seized by the police which were seized by writing one line note at the bottom of the seizure memo that all these were *Stri Dhan* and the seizure is being made on this count. It is not only surprising but shocking that when the Police was investigating a crime for an offence punishable u/s 376 I.P.C. and the other offence i.e., 498-A was secondary for the investigation, they completely left the line of investigation u/s 376 and went upon making investigation on the line of section 498-A, and in all their wisdom, such seizures etc., were necessary. The learned Deputy Advocate General, appearing for the State, also noticed

this fact expressing surprise on the action taken by the I.O. making no explanation as to why such seizure was required. This all goes to suggest that in fact, there appears to be some dispute between the husband and wife, may be the usual dispute in a lower middle class family, due to which the parties had taken recourse to the *Pariwarik Sahayata Kendra*, Raigarh, and it was once resolved as is evident from the version of P.W.5 Sandhya Koka, but when such dispute could not finally be resolved that has resulted into lodging of the F.I.R. by the prosecutrix making such allegations against the father in law.

(17) In the above facts and circumstances, the version of the prosecutrix set forth by her in this matter, in fact, does not inspire confidence of this Court so as to record the conviction on her sole testimony and to hold the appellant guilty of the offence punishable u/s 376 I.P.C. In the opinion of this Court, the Sessions Court committed an error of law in believing the testimony of the prosecutrix and convicting the appellant on her such testimony u/s 376 of I.P.C.

(18) In the result the appeal is allowed. The conviction and sentence awarded to the appellant are hereby set aside. The appellant is acquitted of the charges framed against him. The appellant is reported to be in jail since 04.3.2003. He be set at liberty if not required in any other case.

Sd/-
Sunil Kumar Sinha
Judge

Rao